

JUDGES' BENCHBOOK OF THE BLACK LUNG BENEFITS ACT



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CHAPTER 19 Medical Benefits Only

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Chapter 19

Medical Benefits Only

I. Generally [III(B)(1)]

The regulations at Parts 718 and 727 automatically provide compensation for medical treatment to miners who are found entitled to black lung benefits. However, there are no comparable provisions at Part 410 and § 410.490. As a result, Congress amended the Act as reflected in the following excerpt from the regulations:

Section 11 of the Reform Act directs the Secretary of Health, Education, and Welfare to notify each miner receiving benefits under Part B of title IV of the Act that he or she may file a claim for medical treatment benefits described in this subpart. Section 725.308(b) of this subpart provides that a claim for medical treatment benefits shall be filed on or before December 31, 1980, unless the period is enlarged for good cause shown.

20 C.F.R. § 725.701(A)(a).¹

The regulations at § 725.701(A)(c) require that the miner be alive on March 1, 1978 prior to the application of § 725.701(A)(a). Further, the Board holds that the regulations at Part 727 are applicable to all Medical Benefits Only claims filed prior to December 31, 1980. *Stallard v. South East Coal Co.*, 14 B.L.R. 1-32 (1990). *See also* 20 C.F.R. § 725.701(A)(d).

II. Entitlement to a hearing and scope of consideration

The miner and employer are entitled to a hearing and *de novo* consideration of the medical benefits only claim by an administrative law judge. *Zaccaria v. North American Coal Corp.*, 9 B.L.R. 1-119 (1986); *Settlemoir v. Old Ben Coal Co.*, 9 B.L.R. 1-109 (1986). Indeed, in *Settlemoir*, the Board held that the Social Security Administration's initial determinations of eligibility under Part B are not binding upon the Department of Labor so as to automatically require payment for medical benefits. Thus, an employer's due process rights are preserved through a hearing and *de novo* review of the record before the administrative law judge with regard to liability for medical benefits only. *Id.* at 1-122.

Under 20 C.F.R. § 725.701A, a bifurcated hearing process is provided for those cases wherein the miner's entitlement to medical services is challenged as well as whether particular treatment is related to his or her black lung condition. Liability for medical benefits is determined prior to the issue of reimbursement for any particular medical bills or the resolution of medical

¹ *See* 20 C.F.R. § 725.702 (Dec. 20, 2000).

treatment disputes. 20 C.F.R. § 727.701(A).² See *Stiltner v. Doris Coal Co.*, 14 B.L.R. 1-116 (1990)(*en banc*), *rev'd in part sub nom., Doris Coal Corp. v. Director, OWCP*, 938 F.2d 492 (4th Cir. 1991); *Lute v. Split Vein Coal Co.*, 11 B.L.R. 1-82, 1-84 (1987).

The scope of the administrative law judge's consideration is confined to adjudication of the claim for medical treatment benefits (*i.e.* payment for medical services and supplies) and *not a re-adjudication* of the miner's entitlement to benefits under Part 410 or § 410.490. *Zaccaria, supra*. This is supported by the regulations at 20 C.F.R. § 725.701(A)(e)³, which provides the following:

No determination made with respect to a claim filed under this section shall affect any determination previously made by the Social Security Administration. The Social Security Administration may, however, reopen a previously approved claim if the conditions set forth in § 410.672(c) of this chapter are present. These conditions are generally limited to fraud or concealment.

It is also noteworthy that an employer's initial acceptance of liability for medical benefits does not preclude it from later exercising its right to have the claimant examined by a physician in an effort to challenge the reasonableness and necessity of questionable medical bills. *Allen v. Island Creek Coal Co.*, 15 B.L.R. 1-32 (1991).

III. Eligibility for medical benefits

The regulations permit reimbursement for medical care arising from the miner's total disability due to pneumoconiosis. Twenty C.F.R. § 725.701(A) provides the following:

If a miner seeks reimbursement for medical care costs personally incurred before the filing of a claim under this section, the (District Director) shall require documented proof of the nature of the medical service provided, the identity of the medical provider, the cost of the service, and the fact that the cost was paid by the miner, before reimbursement for such cost may be awarded.

20 C.F.R. § 725.701(A)(h).⁴

The regulations further provide that there shall be “[n]o reimbursement for health insurance premiums, taxes attributable to any public health insurance coverage, or other deduction or payments made for the purpose of securing third party liability for medical care costs is authorized by this section.” 20 C.F.R. § 725.701(A)(h).

² See footnote 1, *supra*.

³ See footnote 1, *supra*.

⁴ See footnote 1, *supra*.

IV. Liability for medical benefits

A. Reimbursement

Initially, it is important to note that medical benefits are awarded for the miner, not a survivor or dependent. *Similia v. Bethlehem Mines Corp.*, 7 B.L.R. 1-535 (1984), *rev'd on other grounds sub. nom., Bethlehem Mines Corp. v. Director, OWCP*, 766 F.2d 128 (3d Cir. 1985); *Thachik v. Greenwich Collieries*, 5 B.L.R. 1-709 (1983).

Once it is determined that the miner is eligible for medical benefits and he or she demands reimbursement, the responsible operator or Trust Fund (if appropriate) must commence such reimbursement. 20 C.F.R. § 725.707⁵; *Lute v. Split Vein Coal Co.*, 11 B.L.R. 1-82 (1987).

For an instructive discussion of reimbursement, see *Alex Litko v. Island Creek Coal Co.*, 18 B.L.R. 3-385 (ALJ 1993).

B. Challenge to liability

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The only method by which an employer or the Director, OWCP may challenge liability for the payment of medical benefits is by filing a request for modification under 20 C.F.R. § 725.310. *Stiltner v. Doris Coal Co.*, 14 B.L.R. 1-116 (1990)(*en banc*), *rev'd in part sub nom., Doris Coal Co. v. Director, OWCP*, 938 F.2d 492 (4th Cir. 1991).

C. Interest on reimbursable costs

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Interest to the claimant may be assessed against the responsible operator (but not the Director, OWCP) for reimbursable medical costs. *Baldwin v. Oakwood Red Ash Coal Corp.*, 14 B.L.R. 1-23 (1989)(*en banc*) (interest accrues thirty days after the initial determination of entitlement to medical benefits).

V. Onset of medical benefits

The regulations at 20 C.F.R. § 725.701(A)(h) provide the following regarding the onset of payment for medical benefits:

If a miner is determined eligible for medical benefits in accordance with this section, such benefits shall be provided from the date of filing, except that such benefits may also include payments for any unreimbursed medical treatment costs incurred personally by such miner during the period from January 1, 1974, to the date of filing which is attributable to medical care required as a result of the miner's total disability due to pneumoconiosis.

⁵ See 20 C.F.R. § 725.708 (Dec. 20, 2000).

20 C.F.R. § 725.701(A)(h).